

211 CMR 54.00: PROCEDURE FOR SURRENDER AND NON-RENEWAL OF LICENSES BY INSURERS AUTHORIZED TO WRITE MOTOR VEHICLE INSURANCE

Section

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54.01: Purpose, Scope and Authority

(1) Purpose and Scope. The procedures established by 211 CMR 54.00 shall govern the administrative process by which an insurer or group of insurers authorized to write motor vehicle insurance may initiate the process of surrendering or non-renewing any or all licenses to engage in the business of insurance in the Commonwealth.

211 CMR 54.00 shall apply only when one or more of the licenses to be surrendered or non-renewed is a license to write motor vehicle insurance.

The purpose for codifying these procedures is to prevent or limit massive market disturbance and to preserve the rights of existing policyholders and others affected, while permitting insurers to phase out their business in an orderly fashion and consistently with the satisfaction of their obligations under applicable laws.

(2) Authority. 211 CMR 54.00 is promulgated in accordance with the authority granted to the Commissioner by M.G.L. c. 175, § 3A, 5, 22C, 22E, 22H, 110D, 113F, 113H, 151, 163, 187B, 187C, 187D, 193P and M.G.L. c. 176D.

54.02: Applicability and Effective Date

211 CMR 54.00 applies to any applicant intending to implement a withdrawal plan on or after the effective date of 211 CMR 54.00. No applicant may effectuate a surrender or non-renewal of any of its licenses without complying with the requirements of 211 CMR 54.00.

No applicant may attempt to implement a withdrawal plan until that plan is reviewed and approved by the Commissioner in accordance with the provisions of 211 CMR 54.05. 211 CMR 54.00 shall expire on December 31, 1997, unless it is extended by the Commissioner.

54.03: Definitions

As used in 211 CMR 54.00, the following terms shall mean:

Applicant, an insurer or group of insurers, including all affiliates, any of which are authorized to write motor vehicle insurance, (referred to herein collectively as the "applicant") intending to surrender or non-renew any or all of its licenses to engage in the business of insurance in the Commonwealth as of a certain date, and seeking review and approval of a withdrawal plan to implement that process.

Affiliate, any parent, subsidiary or other corporation which is either controlled by the applicant, or by a corporation which controls the applicant, or one which controls the applicant, with "control" defined as in M.G.L. c. 175, § 193L.

Commonwealth Automobile Reinsurers ("CAR"), the plan established by M.G.L. c. 175, § 113H, serving as the residual market mechanism for motor vehicle insurance.

Commissioner, the Commissioner of Insurance appointed pursuant to M.G.L. c. 26, § 6, or his or her designee.

Insurer, a company authorized to write insurance of any kind under M.G.L. c. 175.

License, any license, certificate of authority, or other formal approval granted or issued by the Division of Insurance authorizing an insurer to engage in the business of insurance in the Commonwealth.

Massachusetts Resident, a person who is domiciled in Massachusetts or a corporate entity doing business or having any employees in Massachusetts.

Motor Vehicle Insurance, motor vehicle policies or bonds as defined in M.G.L. c. 90, § § 34A, 34O and M.G.L. c. 175, § § 113A, 113C, 113E, and 113O.

Policy, any policy of insurance, annuity, rider, endorsement or other contract covering any Massachusetts resident.

Producer, an insurance producer licensed in accordance with M.G.L. c. 175, § 162I.

Servicing carrier, an insurer that has been appointed pursuant to the CAR Plan and Rules of Operation to issue motor vehicle policies to any risk.

Withdrawal plan, a plan submitted by an applicant in accordance with the provisions of 211 CMR 54.00 which describes in detail how the applicant intends to fulfill its responsibilities in connection with the surrender or non-renewal of its license(s).

54.04: Filing Requirements

(1) Effect of Filing. An applicant's full compliance with the procedures set forth in 211 CMR 54.00 shall not preclude the Commissioner from initiating a proceeding pursuant to M.G.L. c. 175, § 22H against the applicant if necessary.

(2) Timing. An applicant intending to surrender or non-renew any or all of its licenses shall submit all documents required in 211 CMR 54.04(3) no less than seven months before the intended effective date of the withdrawal. The Division shall review and approve or disapprove forms of notices submitted pursuant to 211 CMR 54.04(3)(f)1. and 211 CMR 54.04(3)(f)5.a. through g. within 30 days of receiving an applicant's complete withdrawal plan.

(3) Material to be Submitted. The applicant shall submit to the Commissioner five copies of the following set of documents:

(a) An application to surrender or non-renew any of the applicant's licenses, describing and documenting the applicant's financial condition for the last three years, explaining the applicant's reasons for seeking to withdraw from Massachusetts, including accounting, actuarial and other materials relied upon in deciding to seek withdrawal, and indicating the proposed effective date of such withdrawal.

(b) For a CAR servicing carrier, a copy of its petition to withdraw as a servicing carrier to be submitted to CAR pursuant to CAR Rule 16.

(c) A description of all licenses currently held by the applicant, indicating the date on which such licenses were originally issued;

(d) An organizational chart and a narrative description of the relationships, if any, among the applicant and its affiliates, indicating at least:

1. the lines of insurance which each entity is licensed to write;
2. the management relationships;
3. the financial relationships (e.g., reinsurance agreements, pooling arrangements, common investments);
4. the marketing relationships; and
5. the agency relationships;
6. the claims handling relationships.

(e) A description, by line of insurance written in Massachusetts, of the lines of insurance written by the applicant, the premium written by the applicant for the last three years; estimated market share, if known; the number of current policyholders; the number of current producers; and the number of Massachusetts employees;

(f) A detailed narrative withdrawal plan, with relevant supporting materials, which must include, but is not limited to:

1. copies of the forms of non-renewal notices the applicant intends to send pursuant to M.G.L. c. 175, § § 113F, 163, 187B, 187C, 187D, 193P, and any other notices of non-renewal or cancellation, the intended date of the notice and a description of the identities of the recipients of each such notice. All such notices shall include the following statement:

"[Name of applicant] has submitted a withdrawal plan for approval by the Commissioner of Insurance. Should the withdrawal plan be revised or the effective date changed, you shall be notified."

2. a list of all of the applicant's producers as of the date of application. Include the name and address of each producer, as well as the number of policies and the premium volume handled by each producer, by line;

3. a copy of each sample form of contract between the applicant and its producers, including any subsequent modifications to those contracts;

4. copies of all correspondence intended to be sent to the applicant's producers and policyholders concerning the applicant's withdrawal;

5. copies of all correspondence and notices to be sent to the following entities, as well as a description of all agreements, which need not be in final form, reached with such entities as to the applicant's financial obligations to such entities, as applicable:

a. CAR;

b. the Massachusetts Life and Health Insurance Guaranty Fund, established by M.G.L. c. 175, § 146B;

c. the Medical Malpractice Joint Underwriting Association, established by St. 1975, c. 362, § 6, as amended;

d. the Urban Area Insurance Placement Facility ("FAIR Plan"), established by M.G.L. c. 175C;

e. the Massachusetts Insurers Insolvency Fund, established by M.G.L. c. 175D;

f. the Massachusetts Liquor Liability Joint Underwriting Association, established by St. 1985, c. 223, as amended; and

g. the assigned risk plan for workers' compensation insurance established by M.G.L. c. 152, § 65A; and

6. the address of each of the applicant's offices in Massachusetts, the total number of its Massachusetts employees as of the application date, and in accordance with M.G.L. c. 175, § 110D, a description of the applicant's plan with regard to the termination of its Massachusetts employees. Include a description of the employee benefits to be provided upon termination due to the applicant's withdrawal;

(g) A detailed description of the applicant's financial and other obligations to the entities referred to above in 211 CMR 54.04(3)(f)5.a. through g. for the most recently completed fiscal year or other

accounting period, an estimate of such obligations for the current year and an estimate of such obligations for one year following the year in which the applicant files its withdrawal plan;

(h) A statement, by line of insurance written in Massachusetts, of all the applicant's current incurred liabilities, including those incurred but not reported, as developed and certified by an actuary, all as of a date not earlier than 30 days prior to filing;

(i) A description of the manner in which the applicant intends to handle claims arising from policies held by Massachusetts residents remaining in force after the applicant has otherwise withdrawn from doing business in the Commonwealth. Provide a description of the applicant's staff and adjusters to be used, including their location and the procedures for consumer contact;

(j) A list of all the applicant's deposits currently held by the Treasurer of the Commonwealth, if any;

(k) Written certification from a duly authorized officer of the applicant, signed under the pains and penalties of perjury, that, for as long as there exist any potential claims arising from any policy written by the applicant and covering a Massachusetts resident:

1. the applicant shall fully honor its obligations arising from any such policy;
2. the applicant shall fully service all outstanding policies, bonds and surety lines of credit, which includes processing all usual and customary endorsements requested by insureds during the term of such policies, subject to the applicant's normal underwriting standards;
3. in those cases in which policies remaining in force provide for dividends to be paid, the insurer shall not unfairly discriminate against Massachusetts policyholders in its dividend practices;
4. the applicant shall continue to submit annual statements to the Division of Insurance and shall continue to submit information to the entities identified in 211 CMR 54.04(3)(f)5.a. through g. upon request, for as long as the applicant has any earned premium or has any paid or incurred losses. In addition, the applicant shall remain subject to examination by the Division of Insurance as deemed necessary by the Commissioner and will continue to operate in accordance with and submit to the Commissioner's jurisdiction under M.G.L. c. 176D;
5. The applicant shall continue to operate in accordance with and submit to the Commissioner's jurisdiction under M.G.L. c. 176D.

6. the applicant shall not accept surplus lines placements for any type of business encompassed by the withdrawal plan to avoid the regulatory requirements attendant to business operations pursuant to a license, unless specifically permitted by the Commissioner;

7. the applicant shall maintain designation of the Commissioner of Insurance as its agent for service of process.

(4) Additional information. Notwithstanding the provisions of 211 CMR 54.04(3), at any stage during the review or implementation of a withdrawal plan, the Commissioner may request further information upon any issue or subject related to the withdrawal, and require such information to be supplied by the applicant within a reasonable time. An applicant may at any time submit information and seek to raise issues not included in its initial filing made pursuant to 211 CMR 54.00.

(5) Incomplete filings. In the event the Commissioner finds that the initial filing or supplement thereto, does not contain the information required in 211 CMR 54.04, the Commissioner shall promptly, but no later than ten days from the date of receipt of the initial filing or supplement, notify the applicant orally or in writing and shall specify the additional documents or information required. Otherwise, the filing shall be deemed complete. The applicant shall file the additional information within ten days of its receipt of the notice, or as otherwise specified by the Commissioner. Failure to comply with a such a request for additional information may delay the approval of the withdrawal plan. This provision in no way limits the Commissioner's authority to impose any other sanctions permitted by law.

54.05: Review of Filing

(1) The Commissioner shall promptly undertake a review of the applicant's withdrawal plan upon its receipt, and may conduct a hearing if deemed necessary to inquire into any aspect of the withdrawal plan.

(2) In determining whether or not to approve the timing and terms of the applicant's withdrawal plan, the Commissioner shall take into account the following factors:

(a) market share of applicant in motor vehicle insurance;

(b) solvency of applicant, and the estimated future impact that continuing to issue motor vehicle insurance will have on the applicant;

(c) whether the applicant has reached agreements with all the entities referred to in 211 CMR 54.04(3)(f)5.a. through g., as applicable, as to the applicant's financial obligations to those entities;

(d) good faith compliance with 211 CMR 54.00; and

(e) whether the applicant has agreed to comply with all applicable laws and regulations.

(3) Regardless of whether a hearing is deemed necessary under 211 CMR 54.05(1), the Commissioner shall issue a written decision on the applicant's withdrawal plan no later than 30 days after receipt of a complete filing which includes all the materials referred to in 211 CMR 54.04(3). If the decision requires revisions in the applicant's withdrawal plan in whole or in part, the Commissioner shall state the changes required in the withdrawal plan.

(4) In the event the Commissioner's decision requires revisions in an applicant's withdrawal plan, the applicant may exercise its right to a hearing by filing a written request for hearing within ten days of its receipt of such notice. The Commissioner shall schedule the hearing to be held within 30 days of receipt of the request for hearing. Within 30 days after the conclusion of the hearing, the Commissioner shall either grant approval or shall notify the applicant in writing of the changes required in the withdrawal plan. The applicant shall have the right to judicial review of the Commissioner's decision in accordance with the provisions of M.G.L. c. 30A, § 14.

54.06: Severability

If any provision of 211 CMR 54.00 or the applicability thereof to any person, entity or circumstance is held invalid by a court, the remainder of 211 CMR 54.00 or the applicability of such provision to other persons, entities or circumstances shall not be affected thereby.